

PART VI

ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 410

A. IN GENERAL

The regulations found at 20 C.F.R. §§410.401-476 were originally promulgated by the Secretary of Health, Education and Welfare (HEW) (now Health and Human Services (HHS)) for the purpose of evaluating Part B claims. Pursuant to the Black Lung Benefits Reform Act of 1977, Congress transferred the authority to promulgate regulations for Part C claims from the Secretary of HEW to the Secretary of Labor. 30 U.S.C. §902(f)(1). Pursuant to Section 718.2 (1978), the Department adopted regulations promulgated by the Secretary of HEW as set forth in Subpart D of Part 410 except for 20 C.F.R. §410.490. On March 31, 1980, 20 C.F.R. Part 718 became effective for purposes of establishing entitlement under the Act, and the applicability of Part 410 became in doubt.

For claims filed *after* March 30, 1980, there is general agreement that the Part 718 regulations are the applicable substantive criteria. However, there remains a split of authority regarding the issue of which permanent regulations to apply where the claim is *filed* prior to March 30, 1980 but *adjudicated* thereafter. In ***Muncy v. Wolfe Creek Collieries Coal Company, Inc.***, 3 BLR 1-627 (1981), the Board held that the Part 410 regulations apply to all claims filed prior to March 31, 1980 even though they may be adjudicated thereafter. ***Muncy*** is applied in cases arising in all circuits except those arising in the Third, Sixth, Seventh and Eighth Circuits. See ***Saginaw Mining Co. v. Ferda***, 879 F.2d 198, 12 BLR 2-376 (6th Cir. 1989); ***Knuckles v. Director, OWCP***, 869 F.2d 996, 12 BLR 2-217 (6th Cir. 1989); ***Caprini v. Director, OWCP***, 824 F.2d 283, 10 BLR 2-180 (3d Cir. 1987); ***Strike v. Director, OWCP***, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); ***Oliver v. Director, OWCP***, 888 F.2d 1239, 13 BLR 2-124 (8th Cir. 1989). For claims filed after March 31, 1980, 20 C.F.R. Part 718, Subpart C applies.

In order to establish entitlement under Part 410, a claimant must establish that the miner has or had pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is either totally disabling or, in the case of a deceased miner, was totally disabling at the time of his death or that it caused his death. 20 C.F.R. §§410.410; 410.450; ***Shaw v. Cementation Company of America***, 10 BLR 1-114 (1987); ***Powell v. Director, OWCP***, 7 BLR 1-364 (1984). Failure to prove any of these requisite elements requires a denial of benefits under the Act. ***Hall v. Director, OWCP***, 2 BLR 1-998 (1980).